APPEAL NO. 032581
FILED NOVEMBER 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was begun on July 14, 2003, with Kimberly (hearing officer 1) presiding as hearing officer. Due to the appellant's (claimant) illness, the hearing was continued to and concluded on September 3, 2003, with (hearing officer 2) presiding as hearing officer. Hearing officer 2 determined that the claimant is not entitled to supplemental income benefits (SIBs) for the 14th quarter. The claimant appeals on sufficiency of the evidence grounds. There is no response in the appeal file from the respondent (carrier).

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the relevant qualifying period was from December 25, 2002, through March 25, 2003. The claimant contends that he has met the good faith SIBs requirement because he has a total inability to work in any capacity pursuant to Rule 130.102(d)(4). Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee as been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Entitlement to SIBs is a question of fact for the fact finder. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

Hearing officer 2 determined that the claimant failed to provide a detailed narrative report from a doctor which specifically explained how the compensable injury caused a total inability to work, noting that Dr. T "report states that the claimant is capable of doing some sedentary and sometimes possible light work, but because of pain and medication it is 'going to be difficult for him to perform these activities.'" Hearing officer 2 did not interpret this statement as indicating that the claimant has no ability to work in any capacity. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d

629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **CLARENDON NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

UNITED STATES CORPORATION COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge